

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

JAMES M. LYLE,

Plaintiff,

v.

CIVIL ACTION NO. 5:07-cv-00475

FCI BECKLEY,

Defendant.

MEMORANDUM OPINION AND ORDER

James M. Lyle, pro se, (Plaintiff) brought this action seeking relief under a “1983/Bivens” suit [Docket 1]. On August 2, 2007, this Court referred Plaintiff’s complaint to Magistrate Judge R. Clarke VanDervort for proposed findings of fact and a recommendation (PF&R) (Docket 2). Plaintiff was informed that his lawsuit was not in the correct form (Docket 3), and he was provided with the necessary paperwork to prepare a proper complaint (Docket 8). Plaintiff failed to re-file his complaint, despite being advised by Magistrate Judge VanDervort that failure to submit the provided documents would result in a recommendation of “dismissal of this matter without prejudice” (Docket 9).

On October 1, 2009, Magistrate Judge VanDervort issued a PF&R recommending the dismissal of Plaintiff’s application without prejudice for failure to prosecute (Docket 10). The PF&R also indicated, in a footnote, that Plaintiff was released from custody on September 30, 2008.

This Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to

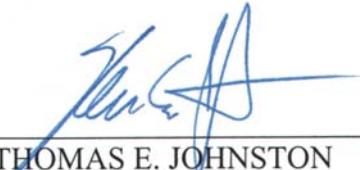
which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of de novo review and the petitioner's right to appeal this Court's order. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge VanDervort's PF&R were due on October 16, 2009, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). To date, no objections have been filed.

Accordingly, the Court hereby (1) **ADOPTS** Magistrate Judge VanDervort's PF&R in its entirety [Docket 10], (2) **DISMISSES** Plaintiff's Complaint [Docket 1] without prejudice, and (3) **DIRECTS** the Clerk to remove this action from the Court's active docket. A separate judgment order will enter this day, implementing the rulings contained herein.

IT IS SO ORDERED.

This Court further **DIRECTS** the Clerk to provide a copy of this Order to Plaintiff, pro se, and Magistrate Judge VanDervort.

ENTER: November 3, 2009



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE